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BACKGROUND

As stated in Article One of The Constitution, Congress does have the exclusive power to legislate for the District of Columbia. In accordance with this legislative authority, Congress has enacted a body of criminal laws for the District providing penalties for such offenses as murder, rape, burglary, petit larceny and assault. These laws are codified in Title 22 of the District of Columbia Code. In order to enforce these laws, Congress has directed the United States Attorney to conduct prosecutions against offenses of the District of Columbia Code (D.C. Code, Section 23-101) and has established a federal Article I court to hear such cases as are brought under the code (D.C. Code, Section 11-901). In addition, the Congress has provided that the persons prosecuted be transported by the United States Marshal for the District of Columbia, and that persons convicted for such crimes be committed to the custody of the Attorney General of the United States.

The United States Attorney's Office for the District of Columbia possesses the largest staff of the 94 U.S. Attorney Offices. It consists of eight divisions, most of which handle litigation in both the District of Columbia Courts and the Federal Courts. The eight divisions, are as follows: (1) Civil Division, (2) Appellate Division, (3) Major Crimes Division, (4) Fraud Division, (5) Career Criminal Division, (6) Special Proceedings Division, (7) District Court Grand Jury and Trial Division, and (8) Superior Court Division.

There are now 159 Assistant United States Attorneys in the District of Columbia Office. It is estimated that about half of the Attorney work-hours and resources of the Office are spent in the prosecution of District of Columbia crimes. The eight divisions of the U.S. Attorneys Office perform the following functions:

1. The Civil Division represents the United States in the District of Columbia; most of its work is in District Court, although from time to time its attorneys do appear in Superior Court.

2. The Appellate Division handles all appeals for the Office in both the D.C. Court of Appeals and the U.S. Court of Appeals.

3. The Major Crimes Division handles all wiretaps out of both courts; it investigates and prosecutes in both courts persons involved in organized criminal activity such as large scale narcotics and fencing operations; it coordinated the Police-FBI undercover fencing operation (Sting, Gotcha Again and Triconn) which resulted in a large number of prosecutions in both the District Court and the Superior Court.

4. The Fraud Division investigates and prosecutes consumer fraud, government corruption and other white collar crime cases in both District Court and Superior Court.

5. The Career Criminal Division (Operation Doorstop) which is a joint police-prosecutor program handles through the grand jury stage repeat violent offenders most of whom are now on probation or parole; the purpose of this Division is to make every effort to prevent the re-release of the repeat offender (either through probation or parole revocation or pretrial detention) and to build solid evidence through investigation in these career criminal cases; the cases are prosecuted in both District Court and Superior Court.

6. The Special Proceedings Division handles all post-conviction collateral attacks (habeas corpus, 28 U.S.C. §2255, etc.) in both Superior Court and District Court as well as civil committments of the dangerously mentally ill.

7. The District Court Grand Jury and Trial Division prosecutes the bulk of the United States Code offenses in the District Court.

8. The Superior Court Division which is comprised of three units--misdemeanor trial, grand jury, and felony trial--prosecutes the bulk of the District of Columbia Code criminal offenses in the Superior Court.

The District's Corporation Counsel has a local "criminal" jurisdiction which extends only to such matters as traffic violations, disorderly conduct, etc. Section 23-101 of the

D.C. Code clarifies the division of prosecutorial responsibility between the U.S. Attorney and the Corporation Counsel more clearly:

(a) Prosecutions for violation of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the Corporation Counsel or his assistants, except as otherwise provided as such ordinances, regulation, or statute, or as this section.

(b) Prosecutions for violations of Section 6 of the Act of July 29, 1892 (D.C. Code, Sec. 22-1107), relating to disorderly conduct, and/or violations of Section 9 of that act (D.C. Code, Sec. 22-1112) relating to lewd, indecent, or obscene acts, shall be conducted in the name of the District of Columbia by the Corporation Counsel or his assistants.

(c) All other criminal prosecutions shall be conducted in the name of the United States by the U.S. Attorney for the District of Columbia or his assistants, except as otherwise provided by law.

Congress has thus committed the Federal Government to prosecuting all but petty offenses committed in the District of Columbia.

As an official appointed by the President with the consent of the Senate, the U.S. Attorney for the District of Columbia is under the direct control of the Attorney General and the Department of Justice. General executive assistance and supervision of the U.S. Attorney offices is provided by the Executive Office for U.S. Attorneys in the Department of Justice.

The Executive Office for U.S. Attorneys formulates and executes a budget for the U.S. Attorneys in ninety-four judicial districts in the United States. As with other U.S. Attorneys, the operations of the U.S. Attorney for the District of Columbia are financed by Congressional appropriation.

Beginning in fiscal 1939, the District of Columbia reimbursed the United States Treasury for a specified percentage of the costs incurred by the United States Attorneys and the United States Marshals for the District of Columbia. From fiscal 1939 to fiscal 1945, authority for the District's reimbursement was contained in annual appropriation acts for the Department of Justice. In fiscal 1945, Congress included in its appropriations act for the District of Columbia a corresponding provision for the reimbursement, and language appeared in subsequent appropriation acts for both the District and the Department of Justice.

From fiscal 1939 to fiscal 1959, the District reimbursed the U.S. Treasury for 60 percent of the estimated expenditures of the local offices of the U.S. Attorneys and U.S. Marshals.

After 1959, the reimbursement percent was raised to 75 percent of expenditures.

In fiscal 1974, Congress began to express concern about the increasing size of the reimbursement and the lack of supporting justification explaining the basis and computation of the estimates. In Senate Report No. 93-321 (p. 25), the Senate District Committee froze the level of the reimbursement to the fiscal 1973 level claiming that: "The Committee cannot approve a 50 percent increase of funding without any information to justify and explain that increase." The House District Committee voiced the same complaints in House Report No. 93-278.

In fiscal 1975, there was a reduction in the reimbursement percentage from 75 percent to 53 percent. The reduction in payments occurred as a result of the findings of a study by the Internal Audit Staff of the Department of Justice. Much of the reduction resulted from the reorganization of the court system of the District of Columbia.

For fiscal 1976, the District Government requested of the Office of Management and Budget that the reimbursement language in their appropriations act be dropped. The District Government was dissatisfied with the reimbursement mechanism for reasons which will be discussed at length below. OMB agreed to the request indicating that the District should enter into a contractual agreement with the Justice Department

pursuant to the intent of Section 731 of the newly-adopted District of Columbia Self-Government and Governmental Reorganization Act.

This section authorizes the District to contract with Federal agencies for the provision of services, and authorizes Federal agencies to provide such services:

> For the purpose of preventing duplication of effort or for the purpose of otherwise promoting efficiency and economy, any Government and any District officer or agency may furnish services to the Federal Government. Except where the terms and conditions governing the furnishing of such services are prescribed by other provisions by law, such services shall be furnished pursuant to an agreement (1) negotiated by the Federal and District authorities concerned and (2) approved by the Director of the Federal office of Management and Budget and by the Mayor....

OMB then requested the Justice Department to drop the reimbursement language from its appropriations request and to enter into negotiations with the District Government in order to conclude a contract governing the provision of services by the U.S. Attorney's Office to the District residents.

Later that year in June 1975, a preliminary meeting was held to discuss the proposed contract. The meeting included representatives from the Office of Management and Budget, United States Attorney's Office for the District of Columbia, and the Executive Office for U.S. Attorneys. It was agreed at that meeting that Sec. 731 of the D.C. Self-Government Act of 1973 did not cover the U.S. Attorney's Office because the services performed by the office are mandated by acts of

Congress and are not discretionary. Furthermore, the purposes of the provision --"preventing duplication of efforts" or "promoting efficiency and economy" obviously did not apply to the only office permitted by law to prosecute crimes under the D.C. Code. The representatives from OMB agreed with this reasoning and indicated that a contractual arrangement appeared to be inappropriate.

Thus, for the past two fiscal years, there has been neither a reimbursement mechanism nor a contract setting out the terms of the financial relationship between the District Government and the Department of Justice. The services performed by the U.S. Attorney continue to be provided to District residents. The funds included in the Federal payment which were intended by Congress to be used by the District to reimburse the Treasury for the U.S. Attorney's services are still being given to the District each year. The situation thus remains unsettled.

CREATION OF A LOCAL PROSECUTOR'S OFFICE

During the hearings held to consider the various home rule bills of 1973, the issue of establishing of a local prosecutor's office was scarely raised. Harry T. Alexander, then Judge of the Superior Court of the District of Columbia stated that "If the citizens of the District of Columbia are to be full citizens, their prosecutor ought to be an elected official... This legislation should be given high priority in this Committee and the concept that the United States Attorney's Office would be unaffected by Home Rule must be challenged." Judge Gerard D. Reilly, then Chief Judge of the D.C. Court of Appeals, on the other hand thought that a local prosecutor's office "would be a great mistake. Certainly the U.S. Attorney's office over the years has never been found wanting in its ability to prosecute effectively." While there may be some abstract justification for the creation of a local prosecutor's office, there is a notable lack of practical support as reflected in interviews with District Government officials.

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prosecution of crimes committed in the District. Proponents of a local prosecutor's office argue that if the citizens of the District of Columbia are ever to share in that full citizenship enjoyed by all residents of any other United States city or town, their prosecutor ought to be responsible and accountable either to the people directly or to their elected representatives.

It is difficult, to support the arguments in favor of a local prosecutor's office with any evidence of the likely practical effect. As there is no way to assess the quality, competence, or responsiveness of an office prior to its establishment, the only assertion that can be made in this regard is that a local prosecutor in the District of Columbia would probably be just as good or as bad as a local district attorney in any comparable metropolitan area.

Yet the present prosecuting office in the District of Columbia is not just the equal of other large city district attorney's offices; the United States Attorney's Office for the District of Columbia has achieved nearly universal recognition for its excellence. Honorable Harold H. Greene, Chief Judge of the D.C. Superior Court stated before a Congressional committee that "we happen to have a very excellent U.S. Attorney's office and very capable, and because of the high prestige which it enjoys, it attracts the finest law graduates and young lawyers from all over the

country." In a floor debate on the D.C. Self-Government Act, Representative Harsha of Ohio, stated that "the U.S. Attorney has made substantial progress in making Washington a nationwide model for law enforcement." In 1975, before the House District Committee, the Corporation Counsel, C. Francis Murphy, paid the following compliment to his colleague: "I think the U.S. Attorney's Office does an extremely good job of prosecuting."

There are many factors which contribute to the high public and professional regard enjoyed by the U.S. Attorney's Office for the District of Columbia. The office attracts some of the highest caliber young lawyers in both the District of Columbia and from throughout the nation. These attorneys are attracted to the unique opportunity to gain litigation experience in both the federal and local courts. They learn to try cases typical not only of a federal prosecutor's office but of a local district attorney's office as well. At the end of the required three years in office, many Assistants go on to serve the public further by transferring to other government positions. The primary recipients of the high quality prosecutors remain, of course, the District of Columbia residents.

The strong committment of the Justice Department to the continued excellence of the United States Attorney's Office is another crucial factor. The Justice Department believes

that a prosecutor's office fully staffed with able attorneys and adequately funded can produce tangible community benefits by detering crime. Justice has invested considerable resources into making the office a model for other state and local district attorney's offices. The number of Assistant United States Attorneys has increased by over 100 in the past ten years, and the D.C. office has become a pioneer in the use of automated information systems. The Prosecutor's Management Information System (PROMIS) allows prosecutors to focus on major violators as well as to be able to spot problems in the criminal justice process when they develop. It is essential to long range planning as well as to the daily allocation of resources.

The existence of a U.S. Attorney's Office which prosecutes street crimes has been of tremendous value to the Department of Justice. Through this office, the Department has been able to develop new programs and materials which are of great assistance to local jurisdictions in law enforcement. The U.S. Attorney's Office for the District of Columbia, for example, has developed specialized programs for training trial prosecutors and manuals to guide young prosecutors which are being emulated by other prosecutors across the country.

Through the D.C. United States Attorney's Office, the Department of Justice can gain a first hand appreciation for local criminal justice problems and can provide some leadership

for local and state governments in the area of local crime. Yet, once again, the ones who have benefited most by the Department of Justice investment of resources are the citizens of the District. The District of Columbia is now ranked seventeenth out of twenty in the crime statistics for cities of similar size. While there are obviously many factors which have contributed to this reduction in crime, (forty per cent since 1970), the performance of the U.S. Attorney's office has unquestionably had a significant impact.

The U.S. Attorney's Office in the District also plays a very special role in the District of Columbia criminal justice system. In addition to fulfilling its traditionally role as prosecutor, the United States Attorney's Office has begun to take on a key role in coordinating the various criminal justice and law enforcement agencies in the District. In the 1973 slaughter of the Hanafi Muslims, for instance, the local D.C. police, the Philadelphia police, the Federal Bureau of Investigation, the Secret Service, and the Postal Inspectors, worked together under the direction of the U.S. Attorney's Office for the District of Columbia. Given the fragmentation, disorganization, and inter-agency rivalry which characterizes many criminal justice projects, the role of the U.S. Attorney's office as a coordinating mechanism can be easily appreciated.

The problems and risks inherent in establishing a local

prosecutor's office in the District of Columbia seem to be numerous. In the first place, one could lose many of those advantages gained by having the prosecutorial functions in the hands of the Federal government. A local prosecutor's office might be unable to attract such high caliber attorneys because it would be unable to offer them experience in both Federal and District of Columbia courts.

The local office would no longer have the resources of the Department of Justice and the Federal government at its disposal. The government of the District of Columbia is now suffering enormous financial problems. The citizens of the District and their elected officials are certainly aware and are appreciative of the importance of the prosecutor's office in deterring crime in the District. Yet, as District officials willingly admit, it is unlikely that the District government would be able to support the local prosecutor to the same extent as the Federal Government. A sharp reduction in funds has in fact been recently imposed on the Corporation Counsel's office. Many attorneys were let go, and the fiscal 1978 budget was reduced to the amount authorized for the office prior to the passage of the D.C. Court Reform Act and the D.C. Self-Government Act--both of which had increased the office's responsibilites.

Some have argued that one of the most deleterious effects of establishing a local prosecutor's office would be

the loss of the leadership and coordination function currently provided by the U.S. Attorney. In addition, the U.S. Attorney as a federal prosecutor is in a position to utilize federal agencies such as the FBI, the Secret Service, the Drug Enforcement Agency, and others in a way that a local prosecutor would not be able to do. Among other reasons, there are statutory and jurisdictional limitations which don't permit these Federal agencies to deal with local matters for purely local district attorneys. Thus, the creation of a local prosecutor could result in the loss of important federal assistance in the investigation of crimes.

It is inevitable that another effect of establishing a local prosecutor's office would be the further fragmentation of the criminal justice system in the District. It appears certain that to complement a local prosecutor's office, the District Government would want to establish a local marshal's office, a local public defender's office, a local bail agency, etc. A single city less than 10 miles square would thus have two separate criminal justice systems--one federal and one local--, and an even greater fragmentation and intensification of jurisdiction rivalries and conflicts would be the result. In this regard, many of the advances made by the United States Attorney's Office in bringing together the various Federal and District of Columbia law enforcement agencies to jointly attack crime and serious criminal cases in the

District of Columbia (for example, the Sting undercover programs, the Career Criminal Operation Doorstop, the Hanafi cases, and the Freeway Phantom cases) would be seriously eroded. Having one prosecutor to whom all the law enforcement agencies look for guidance and for resolution of jurisdictional conflicts has certainly been a significant fact in the cooperative law enforcement effort here in the District of Columbia which resulted in the substantial reduction of crime over the last seven years.

A major, if not the principal impediment to more effective law enforcement in the District of Columbia, is already excessive number of agencies and bureaucracies which too often work at cross-purposes with one another. If anything, there should be an effort at consolidation rather than fragmentation. To begin breaking up the present criminal justice agencies in the District of Columbia into two separate agencies on any basis such as traditional federal-state lines would not only be more expensive, but more important would, by substantially impairing their efficiency, seriously undercut the strides that have been made in the last few years to bring the various components of the criminal justice process together for the purpose of achieving important goals, such as crime reduction.

Moreover, the creation of additional "local" law enforcement agencies to handle purely District of Columbia

matters would create other serious problems. For example, witness subpoenas in District of Columbia Superior Court felony cases are valid anywhere in the United States, and properly so since victims and witneses of crimes may often be tourists or visitors to the District of Columbia from throughout the nation. However, a local sheriff's office would have no power to serve these subpoenas outside the District of Columbia. The result would be that we would have great difficulty obtaining witnesses from outside the jurisdiction. Additionally, witnesses in Superior Court felony cases are presently eligible for protection under the federal witness protection program. This has proved essential in a number of important local District of Columbia prosecutions. With the creation of a sheriff's office, the responsibility for protection of witnesses in District of Columbia cases would be transferred to that office -- an office that would be unable to provide as effective a witness relocation program as the federal government. The net result would be less cooperation from witnesses in major local prosecutions.

In addition, to remove the responsibility of the Department of Justice and the Attorney General for custody of convicted District of Columbia prisoners would be disasterous. Presently, all persons convicted in the District of Columbia are committed to the custody of the Attorney General, who, through the Bureau of Prisons, designates the place of confinement.

D.C. Code, §24-425. By agreement, most District of Columbia prisoners are sent to the Lorton Reformatory. However, because Lorton is the only District of Columbia prison facility complex, it is necessary that certain prisoners be sent to federal institutions. There are at least three categories of prisoners that are presently being sent to federal institutions: (1) persons who after conviction have cooperated with the government (obviously they cannot be housed in the same facility with the person (s) they have testified against); (2) members of the same criminal gang who must be split up for security reasons; and (3) particularly vicious criminals whom Lorton is unable to handle.

Many states have more than one prison facility. However, because the District of Columbia only has one, the Department of Justice through the Bureau of Prisons serves a crucial law enforcement function here. Presently, there are over 600 District of Columbia prisoners in the federal prison system. Without the Bureau of Prisons handling these prisoners, there is no conceivable way the District of Columbia Government could deal with the situation.

Although the electoral process may produce a prosecutor who is more responsive to local community pressures, it would also introduce a susceptibility to unseemly political influence. An elected local prosecutor is subject to great temptations to pursue cases for non-professional reasons such as politics and publicity. Even when a prosecutor is

appointed, there can still be political pressures brought to bear upon him by those who have the power to hire and fire. Judge Gerard Reilly of the D.C. Court of Appeals stated that: "...a greater public respect for the Federal district court prosecutions throughout the country has been because the U.S. Attorney generally is not an elected officer, and the Attorney General recommends...to the President for appointment...someone who does nave considerable legal ability, whereas quite frequently a district attorney might be elected simply because he is a very popular figure rather than an outstanding member of the bar."

Finally, one must recognize the uniqueness of the District of Columbia as the Nation's Capital. The Capital should be a safe place in which to visit, live, and work. The people of the United States seem to look upon crime and safety in the District ultimately as a Federal responsibility. People expected, during the Hanafi siege, for example, that the FBI and the Attorney General would play a role. Yet, in reality only local offenses were committed and without the presence of a federal U.S. Attorney as prosecutor the FBI and Attorney General may not have played a role.

Congress has long acknowledged the Federal responsibility in matters of crime control and prevention in the District. Recognizing this dominant Federal concern and implicitly acknowledging the excellence of the present U.S. Attorney's

office, Congress included a provision in the 1973 D.C. Self-Government Act which precludes any interference in the present prosecutive operation. Section 602 (a) (8) states that: "The Council shall have no authority to--enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than District courts, or relating to the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia."

In order to establish a local prosecutor, Congress would have to pass legislation enabling local prosecutors to prosecute in Article I federal courts in the name of the District of Columbia and not in the name of the United States. Congress would then have to pass legislation which would allow District residents to elect their prosecutor or legislation which would enable the Mayor and the City Council to appoint a prosecutor. The transfer of responsibility from the U.S. Attorney's office to the newly-created local prosecutor' office could well take some years to accomplish. Congress would have to allocate more money to the District to cover both the cost for transfer of prosecutorial function and the cost of the annual operation of the office.

Congress might also be obliged to make decisions regarding the other federal agencies now providing essentially local criminal justice services to the District. The creation of

a local prosecutor's office would be a precedent setting first step and would probably require the establishment of a local Marshal's office, a local Public Defender's office, and a local Bail Agency in order to "rationalize" the entire District of Columbia criminal justice system.

While the creation of a local prosecutor's office may be an appealing idea in democratic theory, as a practical matter there is little to gain and potentially much to lose by tranferring prosecutorial authority to the District of Columbia Government. It is doubtful that a local prosecutor could improve on the community responsiveness, the professional competence or the depth of resources which the U.S. Attorney's Office now offers to the District of Columbia. From the point of veiw of the Federal Government, the Department of Justice would lose direct experience with the problems of "street crime" prosecutions, and it would lose actual responsibil for functions for which it is generally perceived to be responsible. At best, the creation of a local prosecutor would be a symbolic gesture with doubtful practical benefits and with many serious disadvantages to both the District of Columbia and the Federal Government.

DISTRICT GOVERNMENT PAYMENT FOR U.S. ATTORNEY COSTS

Failing the establishment of a local prosecutor's office an important issue remains as to who should pay for the operations of the United States Attorney's office. The costs of the Office's Superior Court Division operations are considerable and are rising:

SUPERIOR COURT DIVISION COSTS

FY1974	$3,240,305
FY1975	$3,568,988
FY1976	$4,062,412
FY1977	$4,398,087 (projected)

A reimbursement arrangement between the District government and the Federal Government could take two distinct forms. In the first place, the D.C. government could be obligated to pay the United States Treasury for costs incurred by the Justice Department. This was the method which has been employed in the past. An alternative arrangement would be to provide for a more formal "contractual" agreement between the District government and the Justice Department. Under this arrangement, the D.C. government would provide funds for the operations of the U.S. Attorney directly to the Justice Department.

There is a bookkeeping logic to the idea that regardless of the organizational relationships controlling the office,

the cost of maintaining the prosecutor's office should in some way be charged to the budget of the local government. In the District of Columbia, the Federal government performs prosecutorial functions which in every other community are peformed by the local government. Accordingly, even though the Federal government would continue to conduct prosecutorial operations, it is reasonable in a bookkeeping sense that the costs of those services should be assigned to the District Government.

If the D.C. Government were required to pay the Treasury for the costs of U.S. Attorney operations, the Department might be obligated to adopt accounting procedures which would accurately isolate and estimate the Superior Court Division costs of the D.C. United States Attorney's office. Upon each billing, the Justice Department would provide the District Government with the essential supporting technical data detailing the resources devoted to District as distinct from Federal activities.

There are, however, several problems with this method of reimbursement. With a reimbursement procedure in which the District Government merely pays to the Treasury the amount the Department of Justice bill, the District Government loses control over the reimbursement. For example, the city government could not decide to reduce the amount of the reimbursement by a certain percentage at the same time as it

was reducing its funding to all D.C. agencies in an "across-the-board" budget cut. The agencies controlled by the District government would then have to bear a disproportionate share of the reductions.

In addition, the reimbursement to the U.S. Treasury poses many problems during the formulation of the District's budget. Here, too, the reimbursement is uncontrollable. By Congressional mandate, the Mayor cannot exceed his budget authority. He would have to formulate a budget based on estimates of the costs of the U.S. Attorney's office given him by the Department of Justice. Past experience has shown that these estimates are consistently and considerably off the actual mark. Presented every year with budget estimates which are too high or too low, the Mayor must juggle the other items in his budget in order to conform with the law. Such budgetary problems are likely to reoccur with a reinstitutic of a reimbursement to the U.S. Treasury.

Finally, a District Government payment to the U.S. Treasury can be seen to have little real logic. The Congress appropriates money to the Justice Department for the U.S. Attorney's Office. The Congress then authorizes the District to take its money, some of which comes from the U.S. Treasury, and to return it to the U.S. Treasury "in payment" for the services provided by the U.S. Attorney. The arrangement seems to have little purpose except to keep the books of the

District in order.

It would not be necessary for Congress to pass legislation in order to reinstitute the reimbursement scheme wherein the D.C. government reimburses the U.S. Treasury. Permanent statutory authority for the old reimbursement never existed. It would only be necessary to write back into the appropriation acts for the Department of Justice and the District the reimbursement language. A more accurate estimate of the costs of the Superior Court Division of the U.S. Attorney's office would have to be determined. The Department of Justice would have to begin to keep more accurate and detailed descriptions of costs and to provide more complete details on the methods of calculation if the reimbursement plan is ever to be accepted by the D.C. government or the Congress.

A CONTRACTUAL ARRANGEMENT FOR PROSECUTION FUNCTIONS

A contractual arrangement between the Department of Justice and the District Government would offer the District Government increased control over the amount of the payment. The Mayor and City Council could decide on a definite amount of funds that they are willing to spend for the prosecution of criminals in the District. Indirectly the District would gain a somewhat greater degree of control over the U.S. Attorney's Office. The budgetary problems of the past reimbursement scheme could also be avoided. By setting the terms of the contract, the District Government can effectively and accurately budget for the costs of the U.S. Attorney's Office and can raise or lower the level of the funding for the office through a rational prioritization of District needs.

Giving the District the authority to contract for the U.S. Attorney's services also gives the District Government a greater say in deciding exactly what they want to pay for. There has been a longstanding suspicion harbored by some city officials that the District Government's reimbursement funds were being sent to support Department of Justice "experiments"--e.g. certain expensive, new programs which were not worth the expense. The PROMIS system, for example, has certainly been helpful in the management of cases, but they question whether it is worth the several hundred thousand

dollars spent on its development. These are decisions which the District Government would now be in a position to make.

Yet, this reimbursement plan has several drawbacks as well. Foremost, among its many disadvantages is the possible adverse effect such an arrangement could have on the quality of prosecution in the District. The District government is experiencing severe financial troubles. It has been making severe across-the-board reductions and may be unable to support the U.S. Attorney's office to the same extent as the Federal Government. In fact, one City Councilmember has predicted that a U.S. Attorney's office funded by the District but still controlled by the Department of Justice would be a prime target for extensive budget cuts. With the Department of Justice retaining accountability for local prosecutions, the District Government might find cutting the budget of the U.S. Attorney's office more attractive than cutting the budget of an agency for which it is directly responsible.

The major problem with either method of reimbursement is clear: An intergovernmental relationship in which one government is responsible for funding and another for performance could easily reduce down to constant wrangling over each one's effect on the other. The Federal Government would rightly maintain that if it is to retain responsibility for the office, it should not be put in the position of having the resources needed for adequate services controlled by an outside agency. The District of Columbia Government also

has the right to complain that if they are to have little or not real control over the office, then they shouldn't have to pay. Both of these positions would be argued loudly and passionately if a reimbursement agreement were to be considered.

In order to institute a reimbursement system wherein the D.C. government "contracted" out for prosecutorial services, several steps would be necessary: (1) Congress would have to repeal Section 602 (a) (8) of the D.C. Self-Government Act which prohibits the D.C. City Council from enacting any law relating to the duties and powers of the U.S. Attorney; (2) representatives of the U.S. Attorney's office, the District govenment, and the Executive Office for U.S. Attorney's would have to engage in perhaps difficult negotiations which would set the terms of the District of Columbia-Department of Justice contract and decide the conditions of payment; (3) Congress would have to authorize that money to the District government in the D.C. appropriations act and would have to make the offsetting deductions in the appropriations act for the Department of Justice to account for the reimbursement.

RETENTION OF FEDERAL CONTROL OVER PROSECUTION FUNCTIONS

It is clear that the present system is working rather well. The U.S. Attorney's office is providing the government and people of the District of Columbia with prosecutorial services of the highest quality. Moreover, as indicated above there are even broader reasons for maintaining the office as presently organized. Chief among these must be the fact that it serves as a model for other offices and provides the Department of Justice an opportunity to see firsthand the problems faced by an important component of the criminal justice system in the District cannot be overlopked.

As discussed earlier, the proponents of a local prosecutor under the direct control of the District Government maintains that such an office would be more responsive to the needs of the community. A tradition of close cooperation with local government officials and community leaders has, however, been carefully cultivated by the Office of the U.S. Attorney. Although there exists no formal accountability to the District Government or the citizens of the District, informal relationship have provided a sensitivity to the needs of the local community.

With the Department of Justice retaining its current responsibilities for the prosecution of offenses under the D.C. Code managerial logic follows that the Department should also retain control over budget formulation and the allocation of resources to fulfill its reponsibilities.

The present financial arrangement could easily be ratified by an exchange of correspondence among the appropriate OMB, Executive Office, U.S. Attorney's office, and D. C. government representatives, stating their agreement to the Department of Justice's continued provision of prosecutorial services to the District and Justice's financial support of the Superior Court Division of the U.S. Attorney's office. No changes would have to made in the language of Department of Justice or District of Columbia appropriations.

ATTACHMENT 15

Department of Justice

1980 Allowance

The 1980 allowance for the Department of Justice is $2,224,802,000 in budget authority, $2,363,518,000 in outlays, 51,715 in end-of-year full-time permanent employees, and 53,331 in end-of-year total employees. These totals do not include an allowance for the NFIP within the FBI, which will be provided later, nor do they include funds to cover the costs of the pay raise that became effective on October 1, 1978.

The allowance reflects the need to reduce employment levels throughout the Government to meet the President's 1980 employment target and the Congressional mandate on 1979 and 1980 employment (the "Leach Amendment"). In reviewing the Department's decision packages OMB tried to honor the Attorney General's priorities. This was difficult insofar as some packages of obvious importance (e.g., U.S. Attorneys and Marshals associated with the Omnibus Judgeship Act) were ranked "below the [budget authority] line" by the Department. The fact that the Department was constrained only by the budget authority and outlay guidance while OMB also sought to constrain employment consistent with the President's guidance greatly compounded the problem of reflecting the Attorney General's views.

The thrust of the allowance is generally consistent with the Department's priorities. It:

- Accords litigative resources highest priority; overall, the legal divisions are not reduced and additional resources are provided for the Judgeship Act;

- Scrutinizes law enforcement agencies for classes of investigations or law enforcement actions that are less effective, within the capabilities of State and local governments, or traditionally staffed at less than authorized levels in order to reduce personnel (or to disallow increases) and thereby provide room for growth in litigative resources;

- Identifies the minimum Bureau of Prisons personnel needed to operate prison facilities in a safe and humane fashion, given the current trends in prison population and the latest prison activation projections;

- Accords State and local assistance programs the lowest priority, consistent with the Department's presentation.

The result was a ranking, and a 1980 budget, with the following characteristics

-Increased personnel for U.S. Attorneys and Marshals associated with the Judgeship Act;

-Transfer of responsibility for the U.S. Attorneys and Marshals serving the DC Superior Court to the District of Columbia government during 1980, which will free additional resources to be applied to the Department's litigative priorities;

-No increases (with one exception noted below) for the Washington-based legal divisions, but no reductions below current levels; the Antitrust Division will receive substantial funds for labor saving litigation support systems and will be asked to offset this with personnel reductions;

-Termination of the Community Relations Service, offset by a small personnel increase for the Civil Rights Division which can expect increased work as a consequence of the CRS action;

-Significant personnel reductions in INS enforcement activities, though service-related activities are protected;

-Relatively small personnel reductions in DEA enforcement activities reflecting continued emphasis on high level conspirators;

-Some reductions in FBI headquarters personnel;

-A smaller BOP complement than requested, since neither the Otisville facility nor the Lake Placid facility will be activated on schedule;

-Significant reductions in funds for grants to be administered by the new Office for Justice Assistance, Research, and Statistics, and further reductions in OJARS personnel, consistent with the Department's ranking;

-Some reductions in central Justice executive direction and control (OMF and OIAJ), consistent with the low priority assigned to these decision packages by the Attorney General;

-No funds for initiatives in the Victims of Crime and Small Disputes Resolution programs, which the Administration will no longer be able to support because of the low priority assigned to these programs;

-No personnel increases for the Parole Commission.

Subsequent adjustments may be made as a result of changes in overtime policy.

The resulting 1980 allowance should be viewed as tentative. When all individual agency budget proposals have been reviewed, policy officials within OMB will conduct a cross-government ranking of marginal decision packages above and below the tentative allowances. It is expected that some agencies and departments will receive additional resources through this process, but it will be necessary to reduce others. An abbreviated ranking is attached that shows the Justice decision packages that will be subject to further review.

The 1979 allowance sets the stage for personnel reductions and other program changes anticipated in 1980. The allowance contains no supplemental appropriations for 1979. End-of-year ceilings for the U.S. Attorneys and Marshals are unchanged. The legal divisions' ceiling is reduced by 100, and no provision is made for the 25 positions authorized by the Congress for the Lands and Natural Resources Division. The Antitrust Division's ceiling is reduced by 20. The law enforcement agencies' ceilings are reduced by 692--100 in DEA and 592 in INS; no provision is made for the 23 positions authorized by Congress for INS, and the reductions are to be taken against new enforcement positions (Border Patrol, investigations and inspectors) authorized in 1979 but not yet filled. The Bureau of Prisons' ceiling is reduced by 160, and no provision is made for Congressional add-ons in 1979. The ceilings for LEAA and OMF are reduced by 30 and 20 respectively, and the CRS ceiling is reduced by 63 in anticipation of a phase-out in 1980.

The Department will be expected to prepare rescission proposals for funds excess to needs after the 1979 pay raise is taken into account.

Any appeal of these allowances is to be submitted to OMB no later than COB November 20. All appeal items are to be ranked in order of priority. A separate request for the October 1, 1978 pay increase, reflecting savings from the anticipated staffing reductions, should be prepared by noon, November 22. Requests received too late for inclusion into the initial decision process should be included in the ranked appeals if the Department wishes them to be considered.

The Department is urged to limit appeals to items of the highest priority to the Attorney General. All appeals should be ranked in Exhibit 1 and described in a single page on Exhibit 2. Additional justification material can be submitted as appropriate.

OMB Ranking of Packages Tentatively Subject to Change

Decision Unit	BA	FTP
FBI bank robbery & fugitive programs (reduce to minimum)	-5.7	-288
INS Border Patrol & inspectors (reduce to minumum)	-8.9	-311
U.S. Attorneys (criminal) and Marshals associated with Judgeship Act (no increases--maintain at current level; civil litigation resources still at enhanced level)	-7.7	-233
DEA State/local TFs and diversion invest. units (eliminate)	-16.4	-245
LEAA block grant (eliminate)	-277.0	--
Initial OMB Allowance	2,224.8	51,715
U.S. Attorneys (civil) (add on additional enhancement)	+4.3	+150
FBI - investigative support (add back to current level)	+2.3	+100
Prisons staff for Otisville (add back to current level)	+2.2	+160
INS Inspectors & Border Patrol (add back to current level)	+11.3	+408
LEAA National priority grant program	+21.0	+50
Legal Divisions and Antitrust Division	+3.0	+150

District of Columbia Superior Court

One item of the FY 1980 budget allowance directs us to discontinue the services of the U.S. Attorney's and U.S. Marshals' offices to the District of Columbia Superior Court and plan to transfer these responsibilities to the District of Columbia during FY 1980. We believe this action is premature and ask that you suspend it. Please be assured that we are not opposed to further discussion of the proposal. However, we believe the discussion should take place in the context of its broader policy implications and the matter should not be resolved by OMB presenting the Department with a fait accompli during the budget process without substantial discussion with the Department. To that end, I am asking Deputy Attorney General Civiletti to coordinate the matter with you. Substantial study and preparations are required to determine the desirability and effects of such action and, if it is desirable, to prepare and enact necessary legislation and carefully plan and implement the transition. Otherwise, there could be very serious effects on law enforcement in the District.

Community Relations Service

The OMB decisions which would reduce CRS by half in 1979 and eliminate it in 1980 are unwise and unacceptable. Abolishing CRS assumes the existence and viability of an alternative mechanism (or the lack of need) for the conduct of CRS activities. During my first year in office, I took a hard look at the process of conciliation and the need for the continuation of CRS. While there were some very serious problems with the agency, I became convinced, after intensive study, that the Service was well worth keeping. After I decided that there was definitely a need for continuation of CRS I set about to improve its management and the delivery of its services. I appointed a Director, Gilbert Pompa, who was familiar with the social problems facing the nation and in June appointed a Deputy to provide the necessary management skills. Since then the agency has made significant progress in establishing a direction that goes along with my priorities.

The importance of using CRS as an alternative to direct law enforcement and litigative remedies is that it creates a mechanism that enables opposing groups to work together to resolve their problems. The more the total community can use a conciliation mechanism to keep divisive issues out of court and off the streets, so we do not have to get involved in litigating and enforcing, the better we can use other scarce resources productively. In this sense, CRS is a very valuable resource for enabling the Federal government to help the nation meet its goals.

Office of the Attorney General
Washington, D. C. 20530

TO: The President

FROM: Griffin B. Bell
Attorney General

SUBJ: Servicing the D.C. Superior Court

I disagree with OMB's proposal to transfer responsibilities for servicing the District of Columbia Superior Court from the U.S. Attorney's Office to the District of Columbia Government. Such a plan would splinter the existing prosecutive functions of the United States Attorney for the District and establish a costly (projected at $6.2 million annually plus start-up costs) new government agency with similar and overlapping responsibilities. Contrary to OMB's assertion, this transfer will not save the federal government money. The District's funding of its present minor prosecutorial juvenile responsibilities is woefully inadequate. It is fanciful to believe that it will be able to fund adult prosecutorial responsibility at the present federal level without a larger federal payment. The only alternative will be a severe decrease in the quality of service provided, a result we cannot afford even if the transfer of prosecutive responsibility were otherwise desirable. Transfer of prosecutive authority will also lead to increased pressure to create in this small geographic area separate costly and inefficient federal and local public defender agencies and bail agencies.

As Chief Judge H. Carl Moultrie of the District of Columbia Superior Court, which tries all local or criminal prosecutions in the District, has stated, depriving the Superior Court of the high quality services of the United States Attorney would in turn "cripple" the services of the Court to the community.

Installing a local prosecutor in the Nation's Capital would divest the President and the Department of Justice of essential law enforcement controls which they are held accountable to exercise by foreign governments, by Congress, and by the American people. It was in recognition of this that in 1971, when the local courts were reorganized, and again in 1973, when Home Rule was enacted, Congress determined that it should continue to be the President who appoints the judges of the local courts and the United States Attorney who serves as the local prosecutor. Congress' determination in this regard recognized the fact that the government cannot afford the risk of having a local prosecutor in the District of Columbia without responsibility or accountability to the President, and the Congress, and the national as opposed to the local interest.

KDR:WDVanStavoren:dcs:12/12/78:X3103:NOT ON TAPE

cc: Mr. Van Stavoren
E.S. (1)
PRBS

Hand carried to AG by AAG/A's o/c.

Under present law, the United States Attorney's Office, which is widely recognized as one of the finest in the country, acts not only as the federal prosecutor in the federal courts here, but also serves as the prosecuting attorney for all serious crime which is in violation of District of Columbia law. These dual functions have made possible efficient, coordinated and frequently innovative actions (1) to protect from crime those who live, work and visit in the Capital city, and (2) to fulfill the federal responsibility to protect our institutions in the seat of government.

In 1977, when Hanafi Muslim terrorists took over three Washington buildings and held over 100 hostages at gunpoint for several days, the President and the Attorney General were able to utilize the jurisdiction of the United States Attorney to perform a key and official role in coordinating the law enforcement and diplomatic response of local and federal agencies. Under the OMB proposal, the federal government would be without legal authority to direct a response to such a crisis in the Nation's Capital.

As another example, the United States Attorney in the District recently directed the investigation into the assassinations of Orlando Letelier, a former Ambassador from Chile, and Ronnie Moffitt, a passenger in the car in which both victims were blown up. The murder of Letelier was a "federal" crime; the murder of Moffitt was only a "local" crime. Were it not for the United States Attorney's jurisdiction over both federal and local offenses, there would have been a wasteful division of investigative responsibilities between local and federal prosecutors, with needless duplication of efforts and interference with one another.

The function of the prosecutor in the administration of criminal justice in the National Capital is different from that of state and local prosecutors elsewhere. The investigation of crime in the District, even "local" crime, frequently extends beyond the District's narrow borders, both to secure witnesses and to apprehend fugitives. Consequently, a federal prosecutor whose jurisdiction, unlike a local prosecutor, extends beyond the confines of the District is a prerequisite to effective law enforcement.

Finally, any move to shift jurisdiction at this time would be premature. Twice, seven and five years ago, Congress revamped the District of Columbia's criminal justice system. Its action took into consideration both local and federal interests in this unique jurisdiction, fashioning a system of criminal justice that would be and has been responsive to both federal and local needs. If another such recasting of the criminal justice process in the District is to be considered, it should take place only after a comprehensive evaluation and study of the whole system is undertaken, not just the prosecutor's office.

Quite candidly, it should not take place at all when the only foreseeable consequence is significant impairment of the ability to enforce the criminal law and investigate and prosecute serious criminal offenses in the Nation's Capital.

ATTACHMENT 18

UNITED STATES DEPARTMENT OF JUSTICE

William E. Kelly, Director
United States Marshals Service

JAN 9 1979

Kevin D. Rooney /s/ KDR
Assistant Attorney General for Administration

Draft Legislation re United States Marshals Service (USMS) Discontinuance of Service to the Superior Court of the District of Columbia

During the review of the Department's FY 1980 Budget Estimates, the Office of Management and Budget (OMB) decided that the USMS would discontinue service to the Superior Court of the District of Columbia in FY 1980, provided the appropriate legislation is enacted in the first session of the 96th Congress.

The OMB decision was appealed because the Department believed that prior to making such a decision a study should be conducted to examine the impact of the decision on the District of Columbia's (D.C.) judicial system. OMB, however, did not accept the Superior Court's appeal on behalf of the USMS. OMB stated that its decision to remove the USMS from direct support of the D.C. Superior Court is in accordance with the Administration's policy of reimbursement for D.C. Government's home rule.

Since an Administration policy decision has been made, I would like the USMS to prepare a draft legislative proposal which, upon review by the Department, can be included as part of the President's FY 1980 legislative program in support of his FY 1980 budget. As you know, upon enactment of this legislation the USMS' FY 1980 budget will be reduced by 42, 13,000 and 1 positions.

Please provide a draft legislative proposal to James F. Hoobler, Director, Program Review and Budget Staff by January 17, 1979.

cc: Assistant Attorney General
Office of Legislative Affairs

The outlay amounts shown for all years are not targets or ceilings; they are estimates of the most probable spending that can be expected to result from the program levels approved by the President. You should continue to place emphasis on improving the accuracy of your department's outlay estimating techniques. We ask that your outlay estimates be reviewed each month in the light of actual spending to date and that this Office be informed whenever it appears that the estimates should be revised.

Ceilings on civilian employment for your department are set forth in Enclosure B. The President has assigned these ceilings in keeping with his commitment to reduce full-time permanent employment throughout the Executive Branch by 20,000 positions and also in conformance with the statutory requirements of section 311 of the Civil Service Reform Act of 1978. This will require that your department's employment be held within the ceilings shown. Since the ceilings will accomplish the objectives of the current limitation on Federal civilian hiring, the President has decided that you may lift or moderate the limitation. You may, of course, choose to keep the limitation in effect if you find it necessary to insure that your agency will meet its 1979 employment ceiling.

The 1980 budget allowance assumes the transfer of responsibility for the support of the District of Columbia Superior Court from the U.S. Marshals Service to the District government during fiscal year 1980. The Department is expected to prepare legislation to effect this transfer promptly. As the next phase, by March 30 of this year we request a comprehensive plan for the transfer of the local prosecution function from the U.S. Attorney to the District government beginning in fiscal year 1981. We believe the plan should include, at a minimum, an implementation schedule, draft legislation, and draft administrative guidelines that (1) define the prosecutor's relationship to Federal law enforcement agencies, (2) preserve the U.S. Attorney's authority to enter or direct the prosecution of local crimes where Federal interests are involved, (3) address the question of the Attorney General's custody over convicted felons, and (4) otherwise assure effective coordination between Federal and local law enforcement and criminal justice activities.

File

COMMENTS ON D. C. PLAN FOR TRANSFER OF APPOINTMENT POWER OF D.C. JUDGES AND OF U.S. ATTORNEY'S AND U.S. MARSHALL'S [illegible] DISTRICT COURT FUNCTIONS TO D.C. GOVERNMENT

Submitted by Earl J. Silbert, Partner
Schwalb, Donnenfeld, Bray & Silbert, 1333 New Hampshire Avenue, N.W., Suite 350, Washington, D.C. 20036.

TO: Special Committee, District of Columbia Board

As indicated on page 1 of the summary, the alleged justification for the proposal in question is to provide "self-determination in areas that are basically local in character".

The Plan, however, itself recognizes that the areas are not basically local in character and it does not provide for self-determination. Its failures to meet its alleged justification is attributable to the facts (1) that the area-crime under the D.C. Code -- is not "basically local in character" and (2) that to try to assure independence and integrity in the administration of justice and avoid excessive concentration of authority in the Mayor, D.C. residents have no input and play no role in the selection process of the District Attorney. Since the plan does not provide for "self-determination" and in fact cannot do so without either jeopardizing the integrity and independence of the prosecutor or providing for an elected District Attorney, the severe disadvantages of the plan resulting from a splintering and fragmentation of the criminal justice process and the inability of a "local" prosecutor to investigate and prosecute effectively criminal conduct involved in D.C. Code crimes that so frequently extend beyond the narrow confines of the District make this plan or any other such plan completely unacceptable.

The plan states (p.5 Main Plan) that it is carrying out the intention the Congress had in enacting the Court Reform Act of 1970 and the Home Rule Act of 1973. This is not so. The fact is that in these statutes the Congress took special pains to assure that the U. S. Attorney and U. S. Marshall would continue to carry out their respective functions and the local

government would have no authority to affect their jurisdiction or to alter or affect the structure and organization of the Article I federal courts in the Court Reform Act. D.C. Code Sections 1-147(a)(4) and (8). The Congress specifically provided for appointment of judges by the president and confirmation by the Senate. D.C. Code, Sec. 11-1501.

As stated at P.2 of the Summary and permeating the plan is the purpose to make the criminal justice process in the District like that in the States so that D.C. residents will be like other citizens. This purpose, however, is fallacious in its conception and riddled with inconsistencies.

1. The District is simply not a state, either organically, in the source of its power and authority, its size, its geography, or its relation to the states or its relation to the federal government. To argue that the District is a state or the equivalent of a state is to ignore reality, history, law, and the Constitution. It is to argue that 2 and 2 are 5. The District, as explicitly set forth in the Constitution, is "the seat of the Government of the United States". Constitution, Article I, Clause 17. Whatever power it is has comes from Congress; in geography and size it is a medium-sized city with a local government similar to that of a city its size.

Yet the thrust of the plan is to give to the District authority in the criminal justice process that no city has, even cities much larger than the District. For instance, no mayor of any city appoints judges to courts of <u>general</u> jurisdiction. Yet the proposed plan calls for it. If no state gives its mayors or heads of other local governments this critically important authority, there must be a reason. At least one reason is obvious -- to avoid concentrating in the hands of the head of a small governmental unit excessive authority, authority that would threaten the independence and integrity of the judicial branch of government.

Similarly, no mayor of a city in the United States, with he possible exception of Honolulu, has the authority to appoint district attorney nor does any of his appointees have the uthority to appoint a district attorney. Yet this is what the lan would do -- an appointee of the Mayor would appoint a istrict attorney who has full prosecutorial authority. If this oo is wholly alien to American local government, there must be n obvious reason for it. There is -- independence and integrity f the prosecutor, especially at a time in history when prosecutors re expected and being called upon to investigate and prosecute lishonesty and corruption in government.

It is clear that the plan proposed by the District lovernment does not really attempt to make it like other local governments -- what it actually does is to give its politicians nore power than their counterparts throughout the country and in a manner that poses a substantial danger to those who live in, work in, and visit the Nation's Capital that the "local" prosecutor and "local" judges will not have the requisite independence and integrity.

2. A second fallacy of the District's justification for its proposed plan is the claim that the plan will increase self-determination of those who live in the District. Self-determination of course, makes sense with respect to public schools, for example, since D.C. residents use and support the local schools virtually exclusively and the schools are physically within the District. The transfer plan, however, completely ignores the interests of the millions of persons, far greater in number than the District residents, who work in or visit the Nation's Capital but who do not live in it. While they rely on the criminal justice process in the District for their safety and presently have a role in the selection of those who administer

it similar to the D.C. residents, they will have utterly no role under the proposed District plan which totally ignores their important interests.

Moreover and at least equally important, in an attempt to meet the unanswerable objections to allowing the Mayor to appoint a district attorney, the plan has tried to insulate his selection and removal by the Mayor. In doing so, however, the plan has deprived D.C. residents of any increased self-determination in the office of the District Attorney. He is not elected; he is appointed by an appointed official who can only be removed for the cause -- on the same grounds judges can be removed. Plan, p.18. This District Attorney is not at all accountable to D.C. residents. Thus the entire alleged justification for a so-called local prosecutor -- increase in self-determination -- has not been satisfied at all with the result that the proposed transfer, if effectuated, would bring with it major, severe drawbacks and disadvantages but not even its one alleged benefit.

3. The home rule or self-determination justification is predicated on the theory that the subject -- D.C. Code crime -- is "basically local in character." Again, this justification makes sense when applied to local public schools. But anyone with only scant exposure to the D.C. criminal justice process is aware that it is in no way "basically local in character." To the contrary, a major portion of it is interjurisdictional in nature, whether considered in terms of the victims, the witnesses, the defendants, or the conduct involved. Indeed, the plan concedes this vital point when it tries to give a court whose judges are appointed by mayor subpoena and warrant power much greater than the subpoena power and warrant power of judges appointed by any governor or elected in any state of the union.

As the plan states (p.54):

> In light of the small geographical area of the District and the millions of persons who visit the District each year, the Superior Court's subpoena power should not be restricted to the geographical area of the District.

In recommending this nationwide subpoena and arrest power (Plan, p.46), the District proposes to give its so-called "local" judges and "local" prosecutors powers possessed only by federal judges and federal prosecutors. Therefore, not only does the plan propose to give its city officials a power no city officials have and also no state officials have, it also recognizes that for the plan to work, its local officials must have the power that federal officials -- Superior Court judges and U.S. Attorney now have. The plan has turned its entire justification on its head: it recognizes the essentially non-local nature of much of the criminal justice process it wants to gain control over, yet wants the control on the theory that it is local.

If a sheriff in New York City cannot go to New Jersey to serve process, why should a local sheriff or marshall from the District have authority to go to Fairfax or Prince George's County as called for by the plan (p.54, 46)? If a state court in any other state cannot rely on the U.S. Marshalls to serve its out of city or even out of state process or arrest warrants throughout the country, what is the justification for such authority on behalf of a local court served by judges and prosecutors appointed by a mayor or by an appointee of a mayor? Why should these judges and prosecutors ahve a nationwide power available to no other state or local judges? There simply is no answer to the questions that is consistent in the slightest degree with the only alleged justification for the transfer-increased self-determination by D.C. residents over local matters.

As the plan states, these powers are necessary "[t]o maintain the effectiveness of the criminal justice system of the

District of Columbia." (p.54) (emphasis supplied). The plan is correct. These powers are necessary. They are necessary because of the non-local character of D.C. crime. They are powers that Article I federal courts and federal prosecutors have and that Congress took special care to assure that they would have. This is a vital reason why the proposed transfer is clearly objectionable and would ill-serve the Nations's Capital.

There are other objections to the plan. For example, the plan recognizes that the existence of a legitimate and compelling federal interest in certain "local crimes"; under these circumstances, the federal prosecutor can through a certification process take over the control of the case (Plan, pp. 42-45). The certification proposal has obvious drawbacks of delay, inefficiency, creating ill-will, resulting lack of cooperation from local police officials who are strangers to federal prosecutors, lack of expertise in the "federal" office for D.C. Code crimes if transfer occurs.

Significantly, the detailed plan proposes no significant affirmative changes in the operation of the new District Attorney's office from the manner in which the U.S. Attorney's office now operates. Instead the plan imitates the U.S. Attorney's office's efforts in investigating and prosecuting D.C. Code crime. This is an obvious tribute to the office, an office with a nationwide reputation for excellence, independence, vigor, progressiveness, initiative and creativity.

Of great importance is the failure of the plan to address the terrible fragmentation effect and loss of efficiency transfer will have in efforts to control and reduce crime. Moreover, other than to state that it will try to retain the present assistant U.S. Attorneys, it gives no basis for believing that the

new District Attorney's Office can possibly attract persons of the caliber the U. S. Attorney's Office has attracted from all over the Country and that the Office will be funded as the U. S. Attorney's Office has been. Given the reduced funding of the Corporation Counsel's Office during a period when its caseload and responsibilities were increasing it is impossible to find in this plan any assurance whatsoever that even if the plan were not otherwise wholly contrary to law enforcement interests in the Nation's Capital, the new office would be adequately funded. This cause for concern is highlighted by the dismal failure of the City Government to support adequately the prosecution of juvenile cases for which it now has responsibility.

Personnel and funding are obviously important but not the most important objection to the plan. Splintering of responsibility, threats to integrity and independence of judges and prosecutors, and lack of ability in terms of institutional power to handle the interjurisdictional aspects of D.C. crime that are so heavily involved -- these are the fundamental objections. Neither this plan nor any plan can accomodate them while at the same time serving the interests of safety and public order in the Nation's capital, interests that are clearly the primary concern of the federal government, and to which the people of this country look to the federal government to secure.

12/11/78.

Memorandum

DATE:

SUBJECT: The Federal Role in the District of Columbia Criminal Justice System

This memorandum sets out the interrelationship of the various elements of the District of Columbia criminal justice system and the constitutional and historical background for the system, including discussion of the Federal Article I District of Columbia court system, the 1970 Court Reorganization Act, the 1973 Home Rule Act, and the reasons why transferring District of Columbia jurisdiction from the United States Attorney's Office, the Marshal's Office, and the Bureau of Prisons would be inimical to both the federal interest and the interests of the citizens of the District of Columbia to control and reduce crime in the Nation's Capital.

CONTENTS

Background

Under the Constitution, Congress has the exclusive power to legislate for the District of Columbia. Art. I, §8, cl. 17. 1/ Pursuant to this legislative power, Congress has (1) enacted a body of criminal laws for the District of Columbia (e.g., murder, rape, burglary, petit larceny, assault) which have been codified in Title 22 of the District of Columbia Code (hereinafter D.C. Code), (2) provided that these crimes are to be prosecuted in Federal Article I courts, the judges of which are to be nominated by the President and confirmed by the Senate (D.C. Code §11-1501); and (3) directed that these crimes be prosecuted by the United States Attorney for the District of Columbia (D.C. Code, §23-101), that the persons prosecuted be transported by the United States Marshal for the District of Columbia (D.C. Code, §11-1729 and §13-302) and that persons convicted for such crimes be committed to the custody of the Attorney General of the United States (D.C. Code, §24-425).

Under this system, created for the Nation's Capital pursuant to Article I of the Constitution, the federal government, and particularly the Department of Justice, is held responsible for the criminal justice process in the District of Columbia and is looked to for overall direction, particularly in emergency circumstances involving serious criminal acts or threats to persons and property (e.g., recent Hanafi-hostage-takeover incident). In order to fulfill this responsibility, it has been given the requisite authority.

1/ Art. I, §8, cl. 17, of the Constitution provides that Congress shall have power

> To exercise exclusive Legislation in all Cases whatsoever, over such District, (not exceeding ten miles square) as may, by Cession of particular States, and Acceptance of Congress, become the Seat of the Government of the United States, . . .

Congress "may exercise within the District all legislative powers that the legislature of a State might exercise within the state; and may vest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the Constitution of the United States." Capital Traction Co. v. Hof, 174 U.S. 1, 5 (1899). "Congress may also exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state and local purposes." Palmore v. United States, 411 U.S. 389, 397 (1973).

This recognition by Congress of the Federal responsibility for the enforcement of the criminal law in the Nation's Capital is to be contrasted with its provision in 1973 for local control over matters of local interest such as education, housing, welfare, etc. In that year, Congress passed home rule legislation for the District of Columbia. This legislation created a new city government including, for the first time, an elected Mayor and an elected City Council with delegated legislative authority in a number of areas. However, no changes were made in the court structure, nor in the role of the United States Attorney or United States Marshal. District of Columbia Self-Government and Reorganization Act, Pub. L. 93-198, 87 Stat. 744 (hereafter Self-Government Act). Moreover, Congress specifically provided that the Council shall have no authority to enact any act or regulation (i) "relating to the organization and jurisdiction of the District of Columbia courts" and (ii) "relating to the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia." Section 602(a)(4) and (8), Self-Government Act; D.C. Code §1-147(a)(4) and (8). Congress also provided that the Council had no authority for 24 months to enact legislation relating to criminal procedure (Title 23 of the D.C. Code), or relating to crimes and treatment of prisoners (Titles 22 and 24 of the D.C. Code). Section 602(a)(9), Self-Government Act; D.C. Code, §1-147(a)(9). This provision was subsequently amended by Congress to extend this time period from 24 to 48 months. Pub. L. No. 94-402, 94th Cong., 2d. Sess. (September 7, 1976).

District of Columbia Court System

Prior to 1970 and the passage of the District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473 et seq. (hereafter Court Reorganization Act), the District of Columbia court system consisted of one appellate court and three trial courts, two of which, the juvenile court and the tax court, were courts of special jurisdiction. The third trial court, the District of Columbia Court of General Sessions, had quite limited criminal jurisdiction over only misdemeanors and petty offenses. D.C. Code, §11-963 (1967). The court's civil jurisdiction was generally restricted to cases where the amount in controversy did not exceed $10,000. Id. at §11-961. The judgments of the appellate court, the District of Columbia Court of Appeals, were subject to review by the United States Court of Appeals for the District of Columbia. Id. at §11-321.

The United States District Court for the District of Columbia had exclusive jurisdiction over felony offenses committed in violation of the District of Columbia Code, id. at §11-521, and had concurrent jurisdiction with the Court of General Sessions over most of the criminal and civil matters handled by that court. Id. at §§11-521, 11-522, and 11-523.

In the late 1960s, the caseloads in the United States District Court had become absolutely unmanageable; it was not unusual for a felony case to take a year-and-a-half to get to trial. Many of the defendants in these cases were out on personal recognizance pending trial, which in part accounted for the soaring crime rate in the District of Columbia. The response by the Department of Justice and the Congress was to relieve the United States District Court and the United States Court of Appeals of its responsibility to handle the great mass of District of Columbia litigation, and place this responsibility in a new and greatly expanded federal Article I District of Columbia court system of general jurisdiction which, among other things, could provide felony defendants with speedy trials.

The Court Reorganization Act was approved on July 29, 1970. During a transition period of several years, jurisdiction over District of Columbia matters was transferred to the new Federal Article I District of Columbia court system. The three former trial courts were combined into the Superior Court of the District of Columbia, D.C. Code 11-901, which was vested with exclusive jurisdiction over all criminal cases, including felonies, brought under the laws applicable exclusively to the District, D.C. Code, §11-923(b). Its civil jurisdiction reached all civil actions and any other matter at law or in equity brought in the District of Columbia, except those in which exclusive jurisdiction was vested in the United States District Court. D.C. Code, §11-921. The appeals court, the District of Columbia Court of Appeals, was no longer subject to review by the United States Court of Appeals, D.C. Code, §11-301, and was declared to be the "highest court of the District of Columbia" for purposes of further view by the Supreme Court of the United States. D.C. Code, §11-102. In recognition of the federal status of the Superior Court, post-conviction collateral attacks of Superior Court convictions were to be brought only in Superior Court. D.C. Code, §23-110(g); Swain v. Pressley, 430 U.S. 372 (1977).

In addition to the shift of jurisdiction, the number of District of Columbia judges was increased (to 44 for the trial bench and 9 for the appellate court), their tenure was lengthened from 10 to 15 years, and their salaries were increased and fixed at a percentage of that of judges of the Article III courts. D.C. Code, §§11-702, 11-703, 11-903, 11-904 and 11-1052; D.C. Code §§11-702, 11-902, 11-1502, 47-2402 (1967). The Court Reorganization Act also established a Commission on Judicial Disabilities and Tenure to deal with suspension, retirement, or removal of District of Columbia judges. D.C. Code, §11-1521 et seq. Appointment of these Article I judges continued to be made by the President with confirmation in the Senate. D.C. Code, §11-1501.

Under the 1973 Self-Government Act, certain changes were made with respect to the appointment of judges. A D.C. Judicial Nomination Commission was created, whose function when a judicial vacancy occurs is to submit to the President a list of three potential nominees from which the nominee must be selected. D.C. Code, §11-Appendix-434. With respect to the reappointment of sitting judges, the D.C. Commission on Disabilities and Tenure was given the responsibility to evaluate judges for reappointment. If this Commission finds a Judge "exceptionally well qualified" or "well qualified," he is automatically reappointed. D.C. Code, §11-Appendix-433. If the Commission finds the judge merely "qualified," his name is sent to the President and the President can either nominate him or not; if nominated, Senate confirmation is required. Ibid. If the Commission finds the judge "unqualified," he is ineligible for reappointment. Ibid.

To summarize, the District of Columbia courts are Article I federal courts. They have been given jurisdiction over the criminal laws enacted by the United States Congress to apply exclusively to the District of Columbia. The Superior Court is to conduct its business according to the Federal Rules of Criminal and Civil Procedure unless specifically modified. D.C. Code, §11-946. Because of the federal nature of the courts and the laws which are enforced there, the United States Attorney for the District of Columbia has been given the responsibility and authority to prosecute. D.C. Code, §23-101. The United States Marshal for the District of Columbia has been given the responsibility to serve court process, provide courtroom security, and to handle the transportation of prisoners. D.C. Code, §§11-1729, 13-302. In recognition of the small size of the Nation's Capital and its role as a government and tourist center, Superior Court felony warrants and subpoenas are valid anywhere in the United States, D.C. Code §§23-563, 11-924(b). Unlike the warrants and subpoenas of any state court system, they are served throughout the country by the Federal Marshal's Service. Persons convicted in Superior Court for felonies and serious misdemeanors are committed to the custody of the Attorney General, D.C. Code, §24-425, and, therefore may be and are confined in federal institutions throughout the country. Thus, it is clear that the District of Columbia court system is a hybrid federal system which has been created for the Nation's Capital. It is a system which because of its federal nature has been serviced by federal law enforcement agencies.

The hybrid and interrelated federal-local nature of the District of Columbia criminal justice process can also be seen from a wide variety of other statutory provisions, provisions unique to the jurisdiction. For example, the Court Reorganization Act specifically amended 28 U.S.C. §292 to authorize the assignment of federal district judges in the District to serve temporarily on the local Superior Court. Unlike any state system, a single jury system for grand and petit juries continues to serve both

Superior Court and District Court. A grand jury of one court may return indictments in the other. D.C. Code, §§11-1902, 11-1903(a). Moreover, either a Superior Court or federal grand jury is free to return in federal District Court indictments for District of Columbia Code offenses which can be joined in an indictment with a federal offense; and the District Court, by a provision of the District of Columbia Code, is given jurisdiction to try cases brought under such indictments. D.C. Code, §11-502(3). The judges of the District of Columbia courts may exercise the contempt powers provided in 18 U.S.C. §402. D.C. Code, §§11-741, 11-944. In addition, Superior Court judges may sentence under two federal statutes, the Federal Youth Corrections Act, 18 U.S.C. §§5010-5025, and the Narcotic Addict Rehabilitation Act, 18 U.S.C. §§4251-4255. All these provisions are further evidence of the unique Article I federal court system that Congress has chosen for the District of Columbia under its constitutional power to legislate for the seat of our national government.

United States Attorney's Office

The United States Attorney's Office for the District of Columbia is the largest federal prosecutor's office in the nation. It not only handles federal civil and criminal litigation like other U.S. Attorney's Offices, but in addition it prosecutes all District of Columbia criminal felony offenses and most District of Columbia serious misdemeanor offenses. Because of the federal nature of the District of Columbia Courts, because District of Columbia criminal laws are reviewed by Congress, and because the District of Columbia is the Nation's Capital, Congress gave the United States Attorney for the District of Columbia the responsibility and authority to prosecute District of Columbia felonies and serious misdemeanors. D.C. Code, §23-101. (The Corporation Counsel for the District of Columbia handles traffic offenses, disorderly conduct violations, and other matters in the nature of local police regulations.) The interest of Congress in having the United States Attorney's Office retain its responsibility for the prosecution of D.C. crimes is demonstrated by the inclusion in the Self-Government Act of 1973 of a specific provision that the local legislature shall have no authority to enact any law "relating to the duties or powers of the United States Attorney." Section 602(a)(8), Self-Government Act; D.C. Code, §1-147(a)(8).

At present, there are 161 Assistant United States Attorneys in the District of Columbia Office, half of whom are primarily involved in the prosecution of D.C. crimes. As more fully discussed below, a dramatic increase in the size of the Office over the past decade has occurred, due to several factors including the Justice Department's commitment to make

the District of Columbia Office a model city prosecutor's office which would develop new ideas in law enforcement that could benefit state and local district attorney's offices, as well as other federal prosecutors.

During the period of 1968-1970, the crime rate in the District of Columbia reached its all time peak. There were a number of reasons for the rising crime rate, several of them directly related to the criminal justice process. First, the federal district court did not have enough judges to handle a large city felony case load and as a result a backlog of over one year in length had developed. Second, as a result of this log jam in federal court, some felonies were reduced, without justification, to misdemeanors so that they could be prosecuted in the District of Columbia Court of General Sessions. Third, the federal Bail Reform Act of 1966, which applied to D.C. cases prosecuted in federal court, resulted in many dangerous individuals charged with violent felonies being released on personal recognizance for over a year while awaiting trial. It was not unusual for an individual to be rearrested and released several times during this pre-trial period. Bail pending appeal was also the rule rather than the exception, and it would often take at least another year to have an appeal decided in the District of Columbia.

One important response to the problem was the enactment by Congress in 1970 of the Court Reorganization Act. Under this Act, as discussed more fully above, the Superior Court for the District of Columbia was created with 44 trial judges, and an appellate court, the District of Columbia Court of Appeals, was expanded to 9 judges. In order to properly service this new court system, a number of additional Assistant United States Attorneys were provided to the District of Columbia Office.

While the creation of a new court system necessitated some expansion in the United States Attorney's Office, the growth in attorney personnel is the result of two other factors: (1) the Justice Department's commitment to make the District of Columbia Office the best city prosecutor's office in the country and a model for state and local district attorney's offices, and (2) recognition by the federal government that the Nation's Capital must be a safe place to live, work, and visit, and that a prosecutor's office fully staffed with highly able, professional lawyers can have an impact on crime.

Since 1970, there have been substantial improvements in the criminal justice process in the District of Columbia. Even more important,

crime is down.. The District of Columbia recently was ranked 17th in the crime statistics for cities of the same or similar size. While there are obviously many factors that contribute to this reduction in crime, the District of Columbia United States Attorney's Office has clearly had an important impact.

In 1970, the last year in which the federal district court had exclusive felony jurisdiction, only 2,287 felony indictments or informations were filed and only 2,201 cases were disposed of with 1,617 convictions. While there were 43% fewer felony offenses reported in 1977 than in 1970, in fiscal year 1977 there were over 800 more felony indictments and 80% more felony convictions than in 1970.. In 1977, there were 3,162 felony indictments or informations filed (up over 800 from 1970); there were 3,408 cases disposed of; and 2,907 cases resulted in convictions. And at the same time that the number of convictions was increasing by 80% from 1970 to 1977, the conviction rate (convictions out of total dispositions) was increasing from 80% in fiscal year 1970 to 85% in fiscal year 1977.

Superior Court has been able to effectively manage its felony caseload. It now takes less than six months to get to trial. Three Assistant United States Attorneys are assigned to each felony trial judge, resulting in highly increased efficiency in moving cases. However, the United States Attorney's Office does not engage in plea bargaining for the sole purpose of reducing backlogs. Plea dispositions are reached based on the litigating realities of cases. It should be noted that 17% of the indicted felony cases go to trial in the District of Columbia--a substantially higher number than most other large city prosecutor's offices. In some jurisdictions, 95% of the cases are disposed of by guilty pleas; in the District of Columbia, 72% of the cases are disposed of by guilty pleas.

Since the 1970 Court Reorganization Act, the District of Columbia United States Attorney's Office has become among the most respected prosecutor's offices in the country. It is a high quality professional office, attracting the highest caliber of young lawyers and law clerks from all over the country. The office receives fifty applications for every available position. Selection from among these applicants is based exclusively on merit, and invariably results each year in the appointments of former Supreme Court law clerks, Law Review editors, and associates from the nation's top law firms. Assistant United States Attorneys for the District of Columbia sign a commitment to remain with the office for at least three years. During this initial period, Assistants not only undergo an intensive training program but have the opportunity to work in four sections of the office: misdemeanor trials,

grand jury, appellate and felony trials. By the end of three years, most Assistants have prosecuted 12 jury and 25 non-jury misdemeanor trials, presented over 100 felony cases to the grand jury, briefed and argued 20 appeals in the local and federal courts of appeals, and tried 15 felony jury trials. Those Assistants who stay with the office for another year or two can continue trying felony cases at a rate of about 20 jury trials a year, work in the fraud or major crimes divisions of the office where major cases against white collar defendants and organized crime figures are investigated and prosecuted, or serve in the civil division which litigates some of the most important cases for the Federal Government.

The end result is that after three or four years in the office, the Assistants have had more varied litigation experience than federal prosecutors in other jurisdictions, relating not only to that handled by federal prosecutors elsewhere but also that typical of large city District Attorney's offices. Consequently, the bright young lawyers who were hired by the office develop into able and knowledgeable trial lawyers with an expertise in criminal law. These lawyers then become a cadre of valuable trial lawyers within the Justice Department and are sought after by the Divisions at Justice and by other federal as well as state and local prosecutor's offices around the country. In the end the Department of Justice receives a valuable return on its investment. Many of the Assistants from the District of Columbia office transfer to eith the Divisions at Justice or to other United States Attorney's offices. (In the past five years over 30 Assistants from the District of Columbia office have moved to other United States Attorney's Offices or the Department.) Those that are hired by state and local prosecutor's offices bring credit to the Department of Justice by improving the quality of justice administered by those offices.

The Justice Department receives other important returns from its investment in the District of Columbia United States Attorney's Office. Specialized programs for training trial prosecutors and handling "white collar" and organized crime are regularly cited as examples that other prosecutor's offices seek to emulate. Materials and manuals developed in the District of Columbia office for training prosecutors have been judged so effective by the Department of Justice that they have been distributed by the Department to over 100 prosecutor's offices around the country. Former Assistant United States Attorneys from the District of Columbia are constantly being sought by district attorneys in other jurisdictions to set up and implement programs modeled on those in the District of Columbia. The District of Columbia office recently developed a 240 page Internal Policy Manual,

which is the first of its kind in the country; this manual sets standards to guide young prosecutors in handling their cases and fulfilling their public responsibility; the purpose is to ensure that the assistants provide fair, uniform and equal treatment to defendants and cases.

In addition, the United States Attorney's Office has been a pioneer in the use of automated information systems. The Prosecutor's Management Information System (PROMIS) developed by the District of Columbia Office in conjunction with the Institute of Law and Social Research, allows prosecutors here to focus on major violators as well as to be able to spot problems in the criminal justice process when they develop. It is essential to long range planning and short run allocation of resources. This system is now being duplicated around the country, particularly in major urban prosecutor's offices such as New York, Detroit, Los Angeles and New Orleans. Recently its innovator in this office, former Assistant United States Attorney Charles R. Work, received the prestigious Rockefeller award in recognition of the development of PROMIS.

In the last two years, the District of Columbia office has been instrumental in two highly publicized and very successful crime fighting programs. The first was the undercover fencing operations which led to the arrests of over 300 persons and the recovery of over three million dollars worth of stolen property (commonly known as the STING and GOT YA AGAIN). This program required the close coordination of the local police, the Federal Bureau of Investigation and the United States Attorney's Office. Because of the success of the District of Columbia program, many other jurisdictions undertook the same kind of operation with good results. The second program is OPERATION DOORSTOP. Its purpose has been to stop the revolving door process of arrest-release, conviction-release, rearrest-release, that for too long has characterized the criminal justice program. A joint program of the local police department and the federal prosecutor's office, OPERATION DOORSTOP utilizes a team of experienced police officers and prosecutors to investigate crimes by repeat offenders through active grand juries and to make every effort to prevent the re-release of repeat offenders, including use of parole and probation revocations. Its first 25 months have been remarkably successful. In a jurisdiction in which approximately 80% of the defendants are released prior to trial, only about 10% of the defendants in OPERATION DOORSTOP have attained their release. Of 454 defendants indicted by the Career Criminal Unit, 424--or 93%--have been convicted. The success of this career criminal program is already clear: crime is down. Moreover, other jurisdictions are now looking at this District of Columbia experience as a model.

Programs such as STING and OPERATION DOORSTOP are more than just local District of Columbia programs. They fulfill in part the Department of Justice's responsibility to provide leadership to local and state governments in the area of crime control. The nation looks to the federal government and the Department of Justice to solve the street-crime problem. The District of Columbia office provides an outlet for the Department of Justice to develop programs and models for the states to emulate and duplicate. The training manuals, the policy manual, the computer system, OPERATION DOORSTOP, STING, and similar innovations in the criminal justice process are all programs developed by the Department of Justice through the District of Columbia office which state and local governments can use to fight crime. These same programs have been instrumental in reducing crime in the Nation's Capital, an obviously important matter for the country as well as the people of the District of Columbia. They emanate in part from the invaluable ability of the District of Columbia United States Attorney's Office to deal with the problem of crime, without being involved in jurisdictional disputes over whether the criminal conduct is "federal" or "local," since it prosecutes both.

Moreover, the local prosecutorial function of the District of Columbia United States Attorney's Office provides the Department of Justice with valuable information. It is through the District of Columbia office that the Department of Justice constantly learns about local criminal justice problems. This is one way the Justice Department receives up-to-the-minute, first hand information on local law enforcement and crime control problems.

As is obvious to anyone who has dealt with the criminal justice process, it is fragmented and disorganized and the various components often head in opposite directions. In the last several years, the United States Attorney's Office has been able to take a key role in coordinating the various criminal justice and law enforcement agencies in the Nation's Capital and establishing open lines of communications. In this regard, the District of Columbia is fortunate in having a single prosecutor who is looked to by the courts and its agencies as well as the local police and the FBI to coordinate and be the focal point for improving the criminal justice process and reducing crime. In 1977 I wrote an article for the American Bar Association Journal in which the pivotal role of the prosecutor in coordinating the various components of the criminal justice process is discussed in detail. A copy of that article is appended hereto. Among other things, the article discusses how the grand jury investigation conducted by the District of Columbia United States Attorney's Office into the 1973 slaughter of seven Hanafi Muslims in the District of Columbia utilized

the cooperative assistance of the local District of Columbia police, the Philadelphia police, the Federal Bureau of Investigation, the Secret Service, and Postal Inspectors. None of these agencies alone could have come close to a successful investigation of these murders. Working together under the direction of the District of Columbia United States Attorney's Office and the grand jury, however, they were able to assemble evidence for a successful prosecution of four persons, although all of them and many of the witnesses resided in Philadelphia.

The pivotal role of the United States Attorney's Office was again evident four years later when the Hanafi leader and his men seized hostages at three District of Columbia buildings in retaliation for the 1973 murder of seven Hanafis. Because of the key coordinating role the United States Attorney's Office had been fulfilling, it was looked to during the crisis situation to coordinate activities between the local and federal agencies and to resolve conflicts between the agencies when they arose.

Finally, and most recently, this office directed the investigation into the assassinations of Orlando Letelier, a former ambassador to Chile, and Ronnie Moffitt, a passenger in the car in which both victims were murdered by an explosive device. While the killing of Letelier was a federal crime, that of Moffitt was a local offense. In the course of the investigation of both murders, this office had to coordinate not only the District of Columbia police, the Federal Bureau of Investigation and officers of the Dade County Public Safety Department in Florida, but also, through the State Department, police and intelligence organizations in Chile, Paraguay and Venezuela. Were it not for the United States Attorney's dual role as the Federal and local prosecutor in the District of Columbia, there would have been wasteful division of investigative responsibilities, as well as needless delays, duplication of efforts and interference with one another. The unique federal-local jurisdiction of the prosecutor in the seat of government made possible the coordination of investigative efforts and resolution of problems, some of them international, which would have been far more difficult had this prosecutor not possessed plenary authority to coordinate the investigation.

Many of these attributes of a single federal-local prosecutor would be placed in jeopardy were jurisdiction for District of Columbia crimes taken away from the United States Attorney and given to a local prosecutor's office. The ability of the United States Attorney's Office to recruit the top legal talent available in the country is in large part due to the fact that the office is able to offer experience in both the Federal and District of Columbia courts. This is valuable experience

for young lawyers and allows the prosecutor's office to compete for the best available judicial clerks and law graduates. A local prosecutor's office would be unable to attract such high caliber attorneys.

Moreover, and more importantly, a local prosecutor would be unable to provide the leadership and coordination function that the present single federal-local prosecutor is able to do. Obviously, for example, a local prosecutor could not coordinate the law enforcement efforts of the FBI, DEA or other federal agencies. Thus, rather than being able to play a key role in coordinating crime reduction in the District of Columbia, a local prosecutor would further fragment the criminal justice process. The inevitable result would be the creation of two separate criminal justice processes in the District of Columbia, one federal and one local. This would require two bail agencies, two public defenders, two marshals' offices, and so on. The number of components in the justice process requiring close coordination and synchronization would be multiplied instead of limited. Practically and economically, it makes little sense to create two totally separate and independent systems in a small geographic area and single city the size of the Nation's Capital.

Additionally, a local prosecutor would not be able to quickly call on the resources of all of the federal investigatory agencies to solve major crimes in the District of Columbia. As discussed above, the ability of the United States Attorney to utilize federal investigative assistance in the 1973 murder of seven Hanafi Muslims was essential to solving that crime. It is extremely doubtful whether full federal cooperation and assistance would have been provided if the United States Attorney had not been in charge of the case.

In this regard it must be emphasized that the prosecutor's responsibility in the administration of justice in the Nation's Capital is fundamentally different from that of State and local prosecutors elsewhere. The investigation of crime in the District, even "local" crime, frequently extends beyond our borders, both to secure witnesses and to apprehend futitives so that prosecution can be successful. Unlike the States, the District of Columbia is only ten miles square and houses the seat of government. The process of a local prosecutor here, as distinct from local and state jurisdictions where it is statewide, would be limited to a single city. Victims of crime and witnesses to crime in the District frequently come from outside the city. In a recent six-month period, for example, almost 200 persons from over 175 cities and towns in 25 states and Canada had to be brought from distances more than 25 miles outside

the District of Columbia to testify as witnesses in felony cases alone, and many hundreds more from closer-in areas of Maryland and Virginia also had to be called to testify. Such visitors to the District often occupy a unique status while here. They may be tourists, government officials or foreign dignitaries who, along with their friends and relatives--or constituents or countrymen--look to the federal government as the ultimate guarantor of peace and good order in the Nation's Capital, and to what happens here to measure how effectively criminal justice is administered in the United States.

This fact raises a basic question as to whether the government can afford the risk of having a local prosecutor in the District of Columbia without responsibility or accountability to the national interest, and who, for reasons of politics or otherwise, may be hostile to the President or the Congress, or merely unconcerned. Despite its present very limited criminal jurisdiction, the Corporation Counsel has in the recent past refused to proceed with prosecutions in certain cases on the grounds that, in his view, the conduct in question, such as the recent violent demonstrations against the Shah of Iran, involved only the federal interest and, moreover, he had only limited prosecutive resources. Consequently, instead of the Corporation Counsel proceeding under what were the most suitable statutes, the federal prosecutor was left with the alternatives of not proceeding at all against these offenses, or prosecuting under cumbersome, inappropriate statutes.

The establishment of a local prosecutor in the District of Columbia also would result in an unacceptable reduction in both the quality and quantity of resources available for prosecuting crime in the Nation's Capital. The office of the United States Attorney in the District has a nationwide reputation for excellence. This reputation is both a cause and effect of the ability of this office to attract outstanding, highly motivated lawyers from across the country. The experience of local prosecutors generally and of the District's Corporation Counsel in particular make it clear that a local prosecutor in the District would be unable to attract lawyers of the same calibre.

Moreover, all available evidence indicates that a local prosecutor's office in the District would not be adequately staffed to meet its important responsibilities. While the allocation of personnel to the United States Attorney in the District has been sufficient to meet both his federal and local responsibilities in prosecuting adult crime, the resources made available to the Corporation Counsel to prosecute juvenile crime have been woefully inadequate. For example, while nearly one-half of burglary arrests and over one-third of robbery arrests in the District in 1976 involved juvenile offenders, the Corporation Counsel was afforded roughly one-eighth of the resources allocated to this office for comparable adult prosecutions. As the District of Columbia government's own Criminal Justice Coordinating Board observed in its 1978 Comprehensive Criminal Justice Plan (pp. III-76-77) with reference to the Corporation Counsel's handling of juvenile prosecutions:

> . . . [M]anpower shortages in the juvenile section have resulted in an annual no paper [dismissal] rate in excess of thirty percent of all cases. Over fifty percent of all youth who come in contact with the juvenile justice system are not even referred to the prosecutor; only the most serious cases are referred by the police. Therefore, it is safe to assume that of the thirty-five percent of the cases dismissed by the prosecutor at least a substantial number involve youth with serious delinquency problems who have probably had repeated prior contact with the police -- often for major crimes. At the present time there is no coordinated mechanism for systematically determining which cases should be fully prosecuted, which cases are appropriate for diversion programs and which should be dismissed from the juvenile justice system altogether. In addition, there is not sufficient knowledge of available community resources that could be used for diverted delinquent youth nor are there sufficient resources to follow up on treatment plans for diverted youth or services provided to them. The result of this lack of comprehensive screening and service delivery is that many youth coming in contact with the juvenile justice system, often for the third, fourth, fifth time or more, are simply dismissed with no service and no sanction. While data is not currently available it is assumed that many of these youth continue to commit delinquent offenses and eventually return to court for serious offenses which are prosecuted.

With a demonstrated inability to provide adequate resources for the most important juvenile prosecutions, and without the essential experience of the United States Attorney's Office to draw upon, it seems highly unlikely that a local prosecutor in the District, even with additional resources, would be able to retain programs of this Office which have proven so effective in investigating and prosecuting government corruption, white collar crime, criminal recidivists and organized crime in Washington.

Consequently, it is hardly surprising that Chief Judge H. Carl Moultrie of the District of Columbia Superior Court, which tries all local criminal prosecutions in the District, has stated that depriving

the Superior Court of the high quality services of the United States Attorney would in turn "cripple" the services of the Court to the community.

There is a further major institutional objection to transferring full criminal jurisdiction to the Corporation Counsel's Office, which would be applicable to any city. The Corporation Counsel is appointed by the Mayor. In almost all other jurisdictions throughout the country, the City Corporation Counsel or Solicitor does not have responsibility for prosecution of major common law crime. The National District Attorneys Association has indicated that it is aware of only one city in the country--Honolulu--where the Mayor appoints the prosecutor. Instead an independently elected district or county attorney is the prosecutor. The reason for this is that since prosecutors have a recognized responsibility to investigate and prosecute white collar crime, fraud, and public corruption, the prospect of a prosecutor politically and economically beholden to a mayor and supporting administration in a tight-knit, small social community with strong personal friendships is institutionally very undesirable. The potential for unremedied corruption and abuse of power is too great. It is true, of course, that the President appoints United States Attorneys--federal prosecutors. Rarely, if ever, however, does the President even know his appointees personally. Rarely, if ever, is there any social or economic connection or association between the President and United States Attorneys. Instead the only connection may be political, but even there the federal prosecutors' political ties to the President are probably only membership in the same party.

Nor is the answer to have an elected District Attorney. Although this would address the problem of excessive concentration of power, it would greatly impair the ability of the federal government through the President, the Attorney General, and the Department of Justice to provide for public safety in the Nation's Capital. An independently elected District Attorney could refuse for any personal or political reason or whim to cooperate and indeed take action that would jeopardize the ability of the federal government to assure peace and good order in the District of Columbia. Any ultimate federal control in this vital area would be lacking, an unacceptable result.

Even with a reduction in resources, it is inconceivable that fragmenting prosecutive responsibilities in the District of Columbia would result in reduced costs. To whatever extent the United States Attorney's functions are shifted to a local prosecutor, a large federal payment to the District will be needed, offsetting any savings in the Department's budget. While we have been advised that the Office of Management and Budget may not contemplate any increased federal payment to the District if prosecutive jurisdiction is dispersed, such a result seems unthinkable in circumstances where the current budget for the local prosecutive functions of the United States Attorney's Office for the District exceeds seven million dollars and the local government has been able to allocate less than 250 thousand dollars to support juvenile criminal prosecutions by the Corporation Counsel (Comprehensive Plan, pp. III-29-30).

In addition to the budgeting considerations that would impact substantially on the creation of a local prosecutor, any move to shift jurisdiction at this time would be premature. It was really quite recently that a comprehensive revamping of the District of Columbia's criminal justice system took place. This action by the Congress, after lengthy study and consideration, took into consideration both local and federal interests in this unique jurisdiction, fashioning a system of criminal justice that would be and has been responsive to both federal and local needs. If another such recasting of the criminal justice process in the District is to be considered, it should take place only after a comprehensive evaluation and study of the whole system is undertaken. It should not take place in an ad hoc, piecemeal fashion with the shift of only arbitrarily identified elements of the system (e.g., the prosecutor) to local authority while local judges continue to be appointed by the President and local prisoners continue to be committed to the custody of the Attorney General.

Finally, the concept that because of some notion of political symmetry home rule in the District justifies a local prosecutor does not withstand analysis. The prosecutive function is quite distinct from the responsibilities of other government agencies which provide essentially local services. Unlike matters involving welfare, health or education which require entirely local coordination in response to local interests, the prosecutor in the Capital city has critical needs to serve which extend beyond local boundaries. In the minds of many Americans, the responsibility for making the Nation's Capital a safe place to live, work and visit rests with the federal government and the Department of Justice. In order to fulfill this responsibility, the Department of Justice must have the authority and ability to coordinate crime control efforts in the District of Columbia. The creation of a local prosecutor would substantially lessen the ability of the Department of Justice through its United States Attorney to reduce crime in the District of Columbia.

United States Marshals Office

By Act of Congress, the United States Marshal for the District of Columbia serves the courts of the District of Columbia. D. C. Code, §§ 11-1729, 13-302. This includes service of most civil and criminal court process, providing courtroom security, transporting prisoners to and from court, and after removal hearings returning to the District of Columbia defendants arrested in other jurisdictions and wanted for prosecution in the District of Columbia. The services provided to the Superior Court by the Marshal are invaluable. Chief Judge H. Carl Moultrie of that Court has declared that the loss of the United States Marshal's Service to his Court and creation of a local sheriff's office would "cripple" the service of the Court to the community.

The Marshal's Office also provides invaluable services for the United States Attorney's Office with respect to both local and federal cases, including service of subpoenas, witness protection, transfer of prisoners between the District Court and Superior Court, and coordinating the return of prisoners to the District of Columbia. Since the Marshal's Office is also within the Department of Justice, coordination with the United States Attorney's Office is especially smooth and efficient.

It is, of course, true that many of the functions the United States Marshal performs for Superior Court are functions that in a state would be performed by a sheriff's office. However, the District of Columbia is not a state and its judicial system is an Article I federal system, which was created for the Nation's Capital by the Congress. The functions of the United States Marshal and the United States Attorney are obviously interwined and integrally related. It is important that these two services be completely cooperative with one another. The idea that a separate District of Columbia sheriff's office be created to handle Superior Court cases not only would jeopardize the harmony that now exists between the one prosecutor and one marshal, but, in addition, it would seriously fragment and decrease the efficiency of law enforcement generally in the District of Columbia.

For example, Superior Court felony subpoenas may be served anywhere in the United States. D. C. Code, § 11-942. This, of course, is important since the District of Columbia has many tourists from throughout the country as well as persons from Virginia and Maryland who work in the city. If the federal marshal's office no longer has responsibility for Superior Court and its processes, felony subpoenas could not be served outside the District of Columbia. A local sheriff's office would not have the authority to go into other jurisdictions to serve subpoenas nor would it likely have sufficient funds for this kind of expense. Presently, a Superior Court subpoena is sent to the federal marshal's office in the jurisdiction in which the witness resides and service is made simply and effectively. Nor are only a few witnesses involved. For example, as mentioned in a recent six month period, nearly 200 persons from over 175 cities and towns in 25 states and Canada had to be brought from distances more than twenty-five miles outside the District of Columbia to testify as witnesses in felony cases alone, and many hundreds more from closer areas of Maryland and Virginia had to be called to testify.

Removing the United States Marshal from Superior Court cases would create other problems for the United States Attorney's Office. At present, the Federal Marshals Service has an excellent witness protection program which includes witness security prior to and during trial, and witness relocation and name-change after trial. Witnesses in local District of Columbia Superior Court felony cases are eligible for this program. In fact, in a number of important local prosecutions, the federal witness protection program has been used with great success. However, the creation of a local sheriff's office would undoubtedly result in the Federal Marshals Service refusing to accept Superior Court witnesses in the witness protection program. The argument would

be made that since the District of Columbia has its own sheriff's office, it is their responsibility to provide witness protection. Even assuming that a local sheriff's office might be able to provide some protection, it would be unable to move witnesses outside the city, since the sheriff's office would only have jurisdiction within the city. In most states, witnesses who need protection can be taken to another city for safe-keeping. In the District of Columbia, there is only one city, which makes protection that much more difficult. Moreover, a local sheriff's office would be unable to accomplish witness relocation. The net result would be that witnesses in the Nation's Capital would be less secure and cooperation in major cases involving potential danger to witnesses would either decrease or not be available at all. The result might well be inability to prosecute some very serious crimes because the security of key witnesses could not be provided for.

Each week, nearly each day, the United States Attorney's Office decides that particular cases in which a person arrested is originally presented to the United States District Court should instead be presented in the Superior Court and vice versa, that is, Superior Court cases are transferred to the District Court. The transfer of the prisoners is efficiently handled by one Office--the United States Marshal. The need to try to coordinate a separate Marshal's and Sheriff's Offices would inevitably delay the prosecution of cases in court and unnecessarily fragment an already too cumbersome process. Similarly, all persons following conviction of a crime under the D. C. Code are committed to the custody of the Attorney General. D. C. Code, 24-425. Their transportation to prisons and return to the District from prisons is handled by one Office--the Marshal's--which has nationwide jurisdiction. The loss of this service would seriously hamper the work of the Superior Court and the United States Attorney's Office.

One reason advanced by proponents of transferring the Marshal's responsibilities in Superior Court to a local sheriff's office is the large size of the District of Columbia Marshal's office. Because of the large size of the office, it is considered difficult to manage efficiently. Frankly, we consider this an unpersuasive argument. If anything, fragmentation of the office will increase, not decrease, inefficiency. The District of Columbia United States Attorney's Office has always willingly accepted the challenge and responsibility to prosecute both federal and District of Columbia cases. Moreover, despite the fact that it is by far the largest federal prosecutor's office in the country, its size has not contributed to inefficiency. To the contrary, its size has enabled it to respond successfully to the problem of crime by helping to reduce it. In doing so, it has gained the reputation as one of the best prosecutor's offices in the nation. There is no reason that we know of why the same should not be true of the District of Columbia Marshal's Office. At the same time the Marshals Service could gain valuable insights from its experience of handling local criminal justice problems. Indeed, the present Marshal, who has brought outstanding qualities of temperament and managerial ability to his position, has helped enhance

the efficiency and quality of service that this office renders to the District of Columbia.

The issue of creating a local sheriff's office in the District of Columbia and transferring the responsibility for servicing Superior Court to it is not nearly as simple as has been suggested. The local functions of the Marshal's Office are integrally related by statute and practice with (1) the Superior Court, an Article I federal court system, (2) the United States Attorney's Office which prosecutes District of Columbia offenses made criminal by acts of Congress, and (3) the Bureau of Prisons which, since all D. C. prisoners are by law committed to the custody of the Attorney General, has over 600 D. C. prisoners within its institutions.

Federal Bureau of Prisons

All persons convicted in the District of Columbia are committed to the custody of the Attorney General, who, through the Bureau of Prisons, designates the place of confinement. D. C. Code, § 24-425. By agreement, most District of Columbia prisoners are sent to the Lorton Reformatory. However, because Lorton is the only District of Columbia prison facility complex, it is necessary that certain prisoners be sent to federal institutions. There are at least three categories of prisoners that are presently being sent to federal institutions: (1) persons who after conviction have cooperated with the government and obviously cannot be housed in the same facility with the person(s) they have testified against; (2) members of the same criminal gang who must be split up for security reasons; and (3) particularly vicious criminals whom Lorton is unable to handle.

Many states have more than one prison facility. However, because the District of Columbia only has one, the Department of Justice through the Bureau of Prisons serves a crucial law enforcement function here. Presently, there are over 600 District of Columbia prisoners in the federal prison system. Without the Bureau of Prisons handling these prisoners, there is no conceivable way the District of Columbia Government could deal with the situation.

Conclusion

In a single city approximately ten miles square, it makes little sense to create more separate agencies and bureaucracies. If anything, there should be an effort at consolidation rather than fragmentation. To begin breaking up the criminal justice agencies in the District of Columbia into two agencies along traditional federal-state lines would not only be more expensive, but also less efficient and could seriously undercut the strides that have been made in the last few years to bring the various components of the criminal justice process together for the purpose of achieving important goals, such as crime reduction.

The District of Columbia is the seat of our national government. The Supreme Court of the United States, the Congress of the United States, the Office of the President, and most of the Executive Departments of the federal government are located in the District of Columbia. Our highest and most important elected and appointed officials carry on the business of government here.

Because of this, the Constitution of the United States granted to Congress the exclusive power to legislate for the seat of our national government. Pursuant to this power, Congress placed the responsibility for the District of Columbia criminal justice process in an Article I federal court system, and in the Department of Justice and its agents, the United States Attorney, the United States Marshal, and the Federal Bureau of Prisons. Congress has consistently felt that there is a national interest in keeping the Nation's Capital a safe place to live, work and visit and therefore has given the federal government the power to coordinate the crime control effort in the District of Columbia. Coordination of local and federal criminal justice and law enforcement agencies through the United States Attorney's Office is and has been essential to crime reduction. Any move to create additional local agencies such as a local sheriff's office or a local prosecutor's office would undercut the ability of the United States Attorney to coordinate the various components. The end result would be further fragmentation, competition among those agencies that should be consolidated and working together, and a much less effective response to the problem of crime.

Attachments